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January 19, 1999

VIA HAND DELIVERY

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

JAN 19 1999

Re: Proposed Joint Venture Between British Telecommunications plc and AT&T Corp., IB Docket No. 98-212

Dear Ms. Salas:

On behalf of Esprit Telecom (U.K.) Limited ("Esprit"), we are pleased to submit Esprit's comments regarding the proposed joint venture between British Telecommunications plc and AT&T Corp.

Please feel free to call with any questions.

Respectfully submitted,



Adam L. Kupetsky
Counsel for Esprit Telecom (U.K.) Limited

Enclosure

cc: Iain Osborne (by facsimile)
Andrew D. Lipman

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PROPOSED JOINT VENTURE BETWEEN BT'S AND AT&T'S INTERNATIONAL
SERVICES

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Esprit Telecom believes the FCC should be concerned about this proposed joint venture. Unless adequately controlled, collaboration between two such powerful operators has the potential to limit competition in the market for services between the US and the UK (and because this is a key transit destination, between the US and the rest of the EU). Because of under-developed UK regulation, the venture could also signal reduced competition in the UK market (particularly the market for services to business).

International Services on UK-US Route

Esprit Telecom retails voice and data services, including on the US route, to European businesses. We expect the proposed operation to affect competition in these markets in three ways:

- The UK's discriminatory dialling access arrangements mean the proposed joint venture would be the only market player with equal access at both ends, which would have anti-competitive effects in both the UK and the US. See below for more information about equal access.
- BT and AT&T are substantial owners of voting rights in the consortia controlling international submarine cables between the UK and the US, and are often responsible for provisioning and maintenance at cable-heads. (The Commission has no doubt established the extent of these rights.) We fear the parties could collude so as to deny other operators rapid access to sufficient international capacity, and also to deny them a quality and cost of service, and speed of provisioning, equivalent to what they enjoy themselves.

Given the dominance of BT/AT&T in the market for US-UK transmission capacity, we believe it would be proportionate to impose a non-discriminatory access condition, which required the joint venture vehicle to deal with other operators on the same terms as with its parents. This would be a short-term solution, and the condition could be replaced by general competition law as more trans-Atlantic capacity comes on stream.

An additional, and longer-term, approach to this problem would be to make the clearance of the joint venture conditional on the acceptance by all cable consortia to which BT and AT&T belong of transparency clauses. These should have the effect that any interested party can obtain records of all decisions taken by consortium committees, and the consortia's internal records, and the operators' internal records relating to consortium business. If national courts and regulatory authorities had full transparency as to how cables are run, existing competition law could be sufficient to prevent abuse of BT's and AT&T's voting rights.

The Commission should also ensure Ofcom is actively monitoring the quality of service provided at cable-heads where BT and AT&T have maintenance or provisioning responsibilities.

- The combination, in a single group of associated companies, of BT, AT&T (UK) and IBM's and ACC's UK operations creates substantial scope for cross-subsidy between these operators, or other anti-competitive collusion. BT would not be permitted to establish an associated company as lightly regulated as AT&T (UK) is, and so nor should it be permitted to acquire one. We believe AT&T should be required to divest its UK operations.

Equal Access

We understand the UK to have applied to the European Commission for a deferment of the obligation to implement carrier pre-selection (CPS) by 1 January 2000, the date specified in the Numbering Directive. If the UK is indeed late in implementing, we believe it will be the only Member State (excluding those liberalising late because of their less developed or very small networks) to delay beyond the end of 1999. Germany has already implemented CPS, and we know of no other Member State having already notified its intention to be late.

The stated reason for this situation is that BT (unlike Deutsche Telekom, France Telecom or indeed Telefonica) will be unable to complete the necessary technical work in the two years from the Council resolution in December 1997 to the deadline at the end of December 1999. BT has proposed a technical solution which involves a full rewrite of the operating protocols controlling its local switches. Oftel have accepted this proposed solution, and also that it will not be in operation until December 2000 for partial CPS, the end of 2001 "or shortly thereafter" for full CPS. Current policy of the UK NRA is therefore to implement the terms of the directive two years late.

The impact of this will be seriously anti-competitive. We attach a letter sent by the European Competitive Telecommunications Association (ECTA), to which Esprit Telecom belongs, to the European Commission, asking that the UK not be granted a deferment of the CPS obligation. To summarise:

- The requirement to dial four extra digits is a serious switching barrier for customers.
- Service providers (if they do not also operate in the local loop market) can only surmount this barrier by providing automatic dialling equipment, which constitutes a significant fixed cost (at least \$30 per line).
- The service provider can only offset this fixed cost on larger accounts, and so the effect of discriminatory dialling access is to limit the number of operators able to compete for the smaller customer's business. Alternative operators are unable to serve economically most residential and many business customers
- The result is that BT's 86% of the residential local loop market is matched by an 83% share of the residential calls market¹.

This is highly relevant to other operators' ability to gain larger shares of international traffic, and to compete on an equal footing with the BT/AT&T joint venture. BT has preferential dialling access and so does not have to invest £20 per line for an automated dialler. This obviously means BT is able to price its service lower as it has less capital investment to pay off.

In fact, BT's price advantage is so substantial that other operators (apart from those few who choose also to operate in the related but separate market for local loop connections) are effectively excluded from targetting smaller businesses and residential customers. This is because even a very efficient new entrant using innovative marketing cannot get over the BT cost-advantage. Residential customers currently make over 44% of all international calls from fixed lines², so CPS would effectively double the share of the market addressable by alternative service providers. CPS would therefore create a major opportunity for US-based carriers to increase their share of the UK market for international calls.

Its letter to DG XIII ECTA suggests three approaches to resolving the problem. None of these would be the most efficient approach, which is why BT and Oftel have refused to countenance them. (Although in fact, Oftel and DTI tell us they have not conducted a cost-benefit analysis of these options before rejecting them.) Nevertheless, we believe even a less-than-perfect solution could substantially mitigate the anti-competitive effects of discriminatory access. Moreover, an inefficient solution which imposes some cost burden on BT could be a powerful spur to make BT implement its own "gold-plated" solution more quickly.

The options ECTA has suggested are:

¹ Source: Oftel Market Information Update, November 1998. Data for local loop market, March 1998 (Table 12), for residential call revenues, Q4 1997/98 (Table 10).

² Source: Oftel Market Information Update, November 1998 (Table 3a).



- For BT to make a serious attempt to roll out CPS, even if only major cities are completed by 1/1/2000. (The FCC could, for example, make clearance conditional on the service being available to 2 million of the 26 million UK households.
- For BT to provide other service providers with a "rebranding" service on cost-plus terms. (This would be technically identical to a service already provided. The only changes needed are contractual, in particular for the service to be priced on LRIC rather than retail-minus terms.)
- For BT to pay the cost of other service providers installing automatic diallers.

We believe the FCC should not allow the joint venture to begin operations until the UK has implemented EC legislation by introducing carrier pre-selection.



Nicholas Argyris Esq.
Director, Directorate A
Directorate General XIII
Rue de la Loi 200/Wetstraat 200
B-1049 Bruxelles/Brussel
Belgique/België

8th December 1998

Dear Mr Argyris,

I am writing on behalf of the **European Competitive Telecommunications Association** and Esprit Telecom to urge you not to grant Oftel's request for a deferral of the requirement to introduce non-discriminatory dialling access in the UK.

We believe this request is not justified for two reasons:

- ❑ The argument that BT is unable to modify its network in time, so as to introduce non-discriminatory dialling by 1 January 2000, does not take account of technical and commercial reality. (Oftel has advanced this argument to UK operators, and we believe it is the main grounds on which they have argued for a derogation.)
- ❑ A deferral would have seriously anti-competitive effects.

Technical and Commercial Realities

Oftel can and should do any of the following to ensure the terms of the Directive are complied with:

Either: Require BT to roll out non-discriminatory market conditions as fast as it can, beginning at the least with major UK cities by 1st January 2000. The nature of the technical challenge is that BT needs to modify every switch in its network individually. If a full, national roll-out cannot be completed by the legal deadline we would look for significant progress as a sign of good faith, and our members would be happy to co-operate in setting up interim arrangements for regional re-direction of traffic as required.

Or: Require BT to provide a "rebranding" service, by which BT handled traffic for competing service providers but passed over billing information to allow the competing operator to bill its customers directly. This service would be commercially equivalent to non-discriminatory dialling, although not technically equivalent. When BT was ready to roll out a network-based solution, customers could be migrated to it. (That no technical problem arises in providing such a service is shown by the fact that BT already offers such rebranding to other operators, in the "Calls and Access" service. The commercial

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terms involved in "Calls and Access" are unattractive, however, and "rebranding" would have to be provided on cost-plus terms if it were to be seen as an adequate substitute for technically-based carrier pre-selection.)

Or: Require BT to fund the provision of automatic diallers to customers of other service providers, until such time as BT's network is ready to comply with the legal requirements placed on an operator with significant market power. We believe such a solution would be acceptable to all parties as compliance with the terms of the Directive, and although the short-term cost to BT would be higher, this may in fact help accelerate progress towards achieving a network-based solution.

Anti-Competitive Effects of Discriminatory Access

BT's dominance of the market for local loops is distorting markets for local, long-distance and international telephony, in the absence of a non-discriminatory mechanism for customers to access alternative service providers. The effect of current arrangements is to restrict choices available to customers, particularly those with medium- to small accounts, and so slow the reduction of prices and improvement of service quality and diversity.

The requirement to dial four extra digits is a serious switching barrier for customers. Service providers in markets other than the local loop market can only surmount this barrier by providing automatic dialling equipment, which constitute a significant fixed cost. The service provider can only offset this fixed cost on larger accounts, and so the effect of discriminatory dialling access is to limit the number of operators able to compete for the smaller customer's business. In general the limit is BT, plus sometimes a cable operator. The overall result is that BT's 86% of the residential local loop market is matched by an 83% share of the residential calls market¹.

Oftel long campaigned against altering this situation on the grounds that it could have fostered the development of alternative local loop providers. We believe this argument was always flawed, and the passage of the Directive should have put an end to the debate. It is quite unacceptable that BT, by failing to act vigorously so as to comply with legal obligations, should be able to cause them to be postponed.

¹ Source: Oftel Market Information Update, November 1998. Data for local loop market, March 1998 (Table 12), for residential call revenues, Q4 1997/98 (Table 10).



We would be delighted to meet with you or any member of your service to discuss this matter.

Yours Sincerely,

Michael Potter
President of Esprit Telecom
&
Chairman of European Competitive Telecommunications Association

Cc: Oftel; DTI; Michael Ryan (Chairman of the European Telecommunications Association, Regulatory Council)

CERTIFICATE OF SERVICE

I, Deborah Walker, hereby certify that on January 19, 1999, a copy of the foregoing comments of Esprit Telecom (U.K.) Limited was hand delivered to the following:

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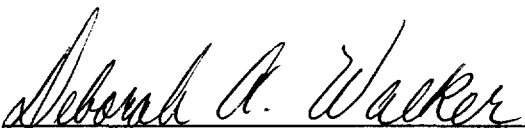
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*via first class mail